

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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EDI HOLDINGS LLC,

Plaintiff-Appellee,

v

LEAR CORP, LEAR-DONNELLY OVERHEAD  
SYSTEMS, a/k/a LEAR CORP-MARLETTE,  
LEAR CORP LEAR EAST, LEAR CORP  
WAUSEON OHIO, LEAR CORP WARREN  
MICHIGAN, and LEAR NAB-CORP, a/k/a LEAR  
MTO CORP,

Defendants-Appellants.

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UNPUBLISHED  
September 16, 2003

No. 240442  
Oakland Circuit Court  
LC No. 01-030611-CK

Before: O’Connell, P.J., and Jansen and Fort Hood, JJ.

PER CURIAM.

Defendants appeal by right the circuit court’s order granting plaintiff’s motion for summary disposition under MCR 2.116(C)(10). We reverse.

Plaintiff entered into a contract with Lear that made plaintiff the exclusive supplier of labels to one of Lear’s<sup>1</sup> manufacturing plants.<sup>2</sup> The contract provided that plaintiff would receive \$100,000 if Lear withdrew from the contract. Plaintiff performed under the contract and delivered labels to Lear. Lear, however, withdrew from the contract without paying the required \$100,000 in liquidated damages, and refused to pay plaintiff \$1.1 million for labels Lear ordered and received.

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<sup>1</sup> Defendants refer to themselves collectively as “Lear” here and in the trial court below, so we treat them as one entity for purposes of this appeal.

<sup>2</sup> Plaintiff supplied warning and informational labels that Lear applied to the automotive parts it manufactured.

Plaintiff filed this action on March 27, 2001. Lear's answer alleged that plaintiff breached its contract with Lear and subjected Lear to economic duress. Plaintiff moved for summary disposition on November 20, 2001, and attached documentary support for its claims.

On November 28, 2001, the court issued a scheduling order that set the motion's hearing date for February 13, 2002. The scheduling order provided that each side must file a brief, Lear must file its response by January 9, 2002, and, germane to this appeal, the court would not consider late briefs. Lear failed to file a response brief within the scheduling order's time limits. Instead it moved to adjourn the hearing date to March 6, 2002, and the trial court granted the motion.

On February 11, 2002, without filing a response brief, Lear again moved to adjourn the hearing date and scheduled the motion's hearing for March 6, the same day the court was scheduled to hear the summary disposition motion. Two days prior to the scheduled hearing, the trial court granted summary disposition to plaintiff. Lear filed its brief one day prior to the hearing.<sup>3</sup>

Lear argues that the trial court erred when it decided the summary disposition motion without a hearing or the benefit of Lear's tardy brief. We agree. A trial court may order the parties to adhere to scheduled deadlines whenever it "concludes that such an order would facilitate the progress of the case." MCR 2.401(B)(2)(a). Also, MCR 2.401(B)(2) provides trial courts with the discretion to refuse to consider actions that a party files after the ordered deadline. *People v Grove*, 455 Mich 439, 469; 566 NW2d 547 (1997) (interpreting and applying the civil rule MCR 2.401). Thus, we review a trial court's decision to refuse an untimely response brief for an abuse of discretion. See *Prussing v General Motors Corp*, 403 Mich 366, 369-370; 269 NW2d 181 (1978). Likewise, we review for abuse of discretion a trial court's decision to forego oral arguments. MCR 2.119(E)(3).

The law generally prefers adjudication on the merits. *Alken-Zeigler, Inc v Waterbury Headers Corp*, 461 Mich 219, 229; 600 NW2d 638 (1999). Refusing to accept a response in the context of MCR 2.116(C)(10) constitutes a strong sanction because it renders the movant's facts undisputed and leads inevitably to summary disposition. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999). Here, the trial court adjourned the hearing date in its scheduling order, but then peremptorily rejected Lear's response and granted summary disposition to plaintiff two days before the new hearing date.<sup>4</sup> In essence, the trial court preempted Lear's defense without first considering the response's merits, the propriety of rejecting it as tardy, or the availability of alternative sanctions. While the trial court went ahead with the hearing as scheduled, the hearing failed to afford Lear a fair opportunity to argue any of these essential

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<sup>3</sup> In its response, Lear asserted that plaintiff violated a separate agreement when it drastically increased its prices on certain specialized labels. Lear claimed that plaintiff increased the prices in retaliation for Lear's withdrawal from the exclusive-supplier contract. Lear estimated that its damages from plaintiff's price gouging surpassed the damages plaintiff claimed.

<sup>4</sup> The trial court entered a \$1.2 million judgment against Lear.

issues. Under these circumstances, the trial court abused its discretion when it granted summary disposition rather than waiting two days and granting Lear a hearing on the merits. Furthermore, without a stronger showing that Lear's delay represented an attempt to thwart the case's adjudication, the trial court improperly imposed the sanction of rejecting Lear's response.<sup>5</sup>

Reversed and remanded for a determination of the appropriate sanction for Lear's delay and a hearing regarding plaintiff's motion for summary disposition in light of Lear's response. We do not retain jurisdiction.

/s/ Peter D. O'Connell

/s/ Kathleen Jansen

/s/ Karen Fort Hood

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<sup>5</sup> In the trial court's defense, we note that Lear did not file its response until nearly two months after the trial court's ordered deadline passed. Lear also missed the deadline in MCR 2.116(G)(1)(a)(ii), which requires parties to file briefs in response to a summary disposition motion "at least 7 days before the hearing."

While we agree with the trial court that Lear's behavior warranted sanctions, we believe it was an abuse of discretion to deny Lear its day in court. On remand, the trial court remains free to sanction Lear for its tardy brief.